

For the Nuclear Regulatory Commission.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35786; File No. SR-Amex-
94-51]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the In Person Trading Volume Requirement for Registered Option Traders

May 31, 1995.

On November 18, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("Commission") a proposal regarding the in person³ trading volume requirement for Registered Options Traders ("Traders").⁴ Notice of the proposal appeared in the **Federal Register** on December 12, 1994.⁵ No comment letters were received on the proposed rule change. The Exchange filed Amendment No. 1 to the proposal on January 9, 1995,⁶ and Amendment No. 2 on April 6, 1995.⁷ This order approves the proposal, as amended.

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ "In person" means that options transactions are personally executed by a Trader on the Amex floor and not through the use of orders given to a floor broker or left on a specialist's book.

⁴ Traders are considered specialists for purposes of the Act. See Amex Rule 958, Commentary .01.

⁵ See Securities Exchange Act Release No. 35050 (December 5, 1994), 59 FR 64002.

⁶ As discussed herein, in Amendment No. 1 the Exchange clarifies the obligation of Traders receiving market maker treatment for off-floor transactions and proposes disciplinary measures for Traders improperly accepting market maker treatment for such transactions. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated January 9, 1995 ("Amendment No. 1").

⁷ In Amendment No. 2, the Exchange proposes to amend Amex Rule 958, Commentary .01 and .03, to provide that Traders must have at least 75% of their trading activity in classes in which they are assigned. Additionally, the Exchange proposes that

Specifically, the Exchange proposes to amend Rule 958 to: (1) Require Traders to execute at least 25% of his or her individual options transactions and total contract volume in each calendar quarter in person and not through the use of orders;⁸ (2) require Traders to have at least 75% of their trading activity (measured in terms of contract volume) in the classes of options to which they are assigned, as opposed to the 50% currently required;⁹ and (3) extend market maker capital and margin treatment for a Trader's opening off-floor orders provided that at least (i) 80% of their total transactions and contract volume on the Exchange in each calendar quarter are executed in person and not through the use of orders and (ii) the Trader satisfies its obligations pursuant to Rule 958.¹⁰ In addition, the proposal requires Traders to satisfy the market making obligations set forth in Amex Rule 958¹¹ for all off-floor orders for which a Trader receives market maker treatment and, in general, that those orders be effected only for purposes of hedging, reducing the risk of, rebalancing, or liquidating open positions of the Trader.

Currently, under Amex Rule 958 there is no in person trading volume or transaction requirement for Traders. The Exchange believes, however, that establishing an in person requirement for Traders of at least 25% of a Trader's individual transactions and total contract volume during each calendar

Traders who elect market maker treatment for off-floor opening transactions but fail to satisfy the requirements of Rule 958 will be referred to the Exchange's Committee on Specialist and Registered Trader Performance rather than the Exchange's Minor Floor Violation Disciplinary Committee as provided in Amendment No. 1. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated April 5, 1995 ("Amendment No. 2").

⁸ The proposal also gives the Exchange the authority to increase the 25% in person requirement if the Exchange, in its discretion, deems such increase to be necessary. The Exchange would not have the authority to lower the in person requirement below 25% without the prior approval of the Commission pursuant to a rule filing under Section 19b of the Act.

⁹ See Amendment No. 2, *supra* note 7.

¹⁰ See Amendment No. 1, *supra* note 6. Currently, Rule 958, Commentary .03 provides, among other things, that except for unusual circumstances, at least 50% of a Trader's trading activity in any calendar quarter (in terms of contract volume) must ordinarily be in classes of options to which the Trader is assigned. In Amendment No. 2, the Exchange proposes to amend this requirement so that at least 75% of total activity (in terms of contract volume) must be in assigned classes. See Amendment No. 2, *supra* note 7.

¹¹ These obligations include, but are not limited to, requiring that such transactions contribute to the maintenance of fair and orderly markets, and requiring market makers to bid and offer within prescribed parameters.

quarter will result in better, more liquid markets because Traders will be available in trading crowds to contribute to the maintenance of fair and orderly markets, and will encourage Traders to make more competitive bids and offers and trade for their own account when there exists a lack of price continuity, a temporary disparity between the supply of and demand for options contracts, or a temporary distortion of the price relationships between options.

With regard to market maker treatment for off-floor options transactions, Amex Rule 958(g) currently provides that only option transactions initiated on the Amex's floor count as market maker transactions. Thus, only on-floor market maker transactions qualify for favorable capital and margin treatment under the Amex's rules, even if such orders are entered to adjust or hedge the risk of positions of the Trader that result from the Trader's on-floor market making activity.¹²

The Amex states that because a Trader currently cannot effectively adjust his or her positions or engage in hedging or other risk limiting opening transactions from off the Exchange floor without incurring a significant economic penalty, Amex Traders must either be physically present on the floor at all times while the market is open, or face significant risks of adverse market movements during those times when they must necessarily be absent from the trading floor. The Amex argues that by imposing costs on certain hedging or risk-adjusting transactions of Traders, the Amex's current rules may prevent Traders from effectively discharging their market making obligations and expose them to unacceptable levels of risk. The Amex believes that the amended proposal addresses these concerns by offering Traders the opportunity to obtain market maker treatment for up to 20% of their off-floor opening transactions.

Traders who elect market maker treatment for off-floor opening transactions but fail to satisfy the proposal's requirements, including the 80% in person requirement, will be referred to the Amex's Committee on Specialist and Registered Trader Performance and subject to the disciplinary measures provided in Article V of the Exchange's Constitution.¹³ Under Article V of the Exchange's Constitution, the Exchange

¹² Questions of margin and capital treatment do not arise in connection with closing transactions initiated from off the floor, because they only reduce or eliminate existing positions.

¹³ See Amendment No. 2, *supra* note 7.

may impose appropriate discipline for violations of the Act and the Exchange's rules, including expulsion, suspension, limitation of activities, fines, censure, or any other suitable sanction.¹⁴

The Amex believes that the amended proposal presents a more appropriate and realistic treatment of Trade transactions initiated from both off the trading floor and in person than what is provided for under existing Exchange Rule 958. The Amex believes that requiring Traders to execute at least 25% of their transactions and total contract volume in each calendar quarter in person and, further, extending favorable margin and capital treatment for off-floor transactions only to those Traders who satisfy the 80% in person transaction and trading volume requirement, should have the effect of increasing the extent to which Trader transactions contribute to liquidity and to the maintenance of fair and orderly markets on the Amex by providing for a greater degree of in person trading by Traders and by enabling Traders to better manage the risk of their market making activities. Thus, the Amex believes that the proposal is consistent with and in furtherance of the objectives of Section 6(b)(5) and Section 11(a) of the Act in that it will promote the maintenance of fair and orderly markets on the Amex and will contribute to the protection of investors and the public interest.

The Commission finds that the proposal rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.¹⁵ In addition, the Commission finds that the proposal is consistent with the requirement under Section 11(b) of the Act and the rules thereunder that require market maker transactions to be consistent with the maintenance of fair and orderly markets.¹⁶

The Commission believes that the proposal is a reasonable effort by the Amex to accommodate the needs of Traders to effect off-floor opening transactions while reinforcing the requirement under Amex Rule 958 that Traders' transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. The Commission

believes that the proposed 25% minimum in person trading requirement, the 75% minimum assigned class requirement, and the 80% in person requirement for market maker treatment for off-floor trades, taken together, will help to ensure that Traders' transactions continue to contribute to the maintenance of fair and orderly markets while, at the same time, enabling Traders to better manage the risk of their market making activities.

As the Amex has noted, under the current requirements, Traders who adjust existing positions for hedging purposes while not physically present on the Exchange floor cannot receive market maker margin treatment for such orders under any circumstances and must decide whether to close out their positions or place their orders in a customer margin account requiring 50% margin. While this may not be an unreasonable result in many cases, the Commission believes that the Amex has set forth a reasonable proposal that permits market maker treatment for certain off-floor orders under very limited circumstances that ensure that such orders must contribute to the maintenance of fair and orderly markets and that require Traders to comply with a heightened 80% in person trading requirement.

Moreover, by requiring that a percentage of Traders' transactions be effected in person and by strengthening the requirement that a substantial percentage of Traders' transactions be effected in their appointed classes, the proposal will improve Amex market maker capabilities. The Commission believes these requirements will help to ensure that Traders will be physically present in their appointed classes to respond to public orders and to improve the price and size of the markets made on the Amex floor. In addition, the proposal will have the effect of reducing the extent to which Amex Traders can effectively function as privileged investors by entering the Amex floor only long enough to drop off orders with a floor broker, without ever actually making competitive quotations or otherwise affirmatively functioning as market makers. Thus, the Commission believes the Amex proposal will serve to maintain fair and orderly markets and generally promote the protection of investors and the public interest.¹⁷

In summary, the Commission believes that the introduction of an in person trading requirement, an increase in the required percentage of trades in assigned classes, and the availability of market maker treatment for a limited number of off-floor transactions, as described above, should help to ensure the stability and orderliness of the Amex's markets.

The Commission expects the Amex to closely monitor those Traders electing to receive market maker treatment for off-floor orders as provided under the proposal to ensure that they are meeting the in person trading requirements in addition to their other market making obligations required under Rule 958, as amended. The Amex has represented that market makers who choose to receive favorable margin and capital treatment under the proposal but fail to satisfy the proposal's requirements will be referred to the Exchange's Committee on Specialist and Registered Trader Performance and subject to the sections available under Article V of the Exchange's Constitution.¹⁸ The Commission expects the Exchange to impose strict sanctions for violations of the rule, particularly in cases of egregious or repeated failures to comply with the rule's requirements.¹⁹

Finally, the Commission notes that the staff of the Board of Governors of the Federal Reserve System ("Board") has previously issued a letter raising no objection to the Commission's approval of a substantively similar proposal by the CBOE based on the Commission's belief that the off-floor transactions of market makers for which they can receive market maker treatment will be designed to contribute to the maintenance of a fair and orderly market and would be consistent with the obligations of a specialist under Section 11 of the Act.²⁰

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission notes that Amendment

¹⁸ See Amendment No. 2, *supra* note 7.

¹⁹ The Amex plans to issue a circular to its membership describing the rule change and emphasizing the importance of monitoring off-floor trading activity. Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on January 10, 1995.

²⁰ See Securities Exchange Act Release No. 34104 (May 25, 1994), 59 FR 28438 (June 1, 1994), note 13 (citing letter from Scott Holz, Senior Attorney, Board, to Howard Kramer, Associate Director, Division, Commission, dated March 9, 1994) ("Exchange Act Release No. 34104").

¹⁴ *Id.*

¹⁵ 15 U.S.C. 78f(b)(5)(1988).

¹⁶ 15 U.S.C. 78k (1982) and 17 CFR 240.11b-1.

¹⁷ See Securities Exchange Act Release No. 21008 (June 1, 1984), 49 FR 23721 (June 7, 1984), (order approving proposed rule change by the Chicago Board Options Exchange ("CBOE") establishing minimum in person and assigned class trading requirements for market makers).

Nos. 1 and 2 are more restrictive than the original proposal, which was published for the full 21-day comment period without any comments being received by the Commission.²¹

Additionally, the Commission notes that Amendment Nos. 1 and 2 conform the Amex proposal, in most respects, to the CBOE proposal previously approved by the Commission.²² Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-94-51 and should be submitted by June 28, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (File No. SR-Amex-94-51), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,
Deputy Secretary.

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²¹ The Commission believes the amended proposal is more restrictive in that it clarifies the obligations that Traders must satisfy in order to obtain market maker treatment for off-floor opening transactions and obligates the Exchange to initiate disciplinary proceedings against members who improperly accept market maker treatment for such transactions.

²² See Exchange Act Release No. 34104, *supra* note 20.

²³ 15 U.S.C. 78s(b)(2) (1988).

²⁴ 17 CFR 200.30-3 (a)(12) (1994).

[Release No. 34-35784; File No. SR-Amex-95-18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Use of the Series 7A and 7B Examination Modules

May 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1995, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is seeking approval to utilize the Series 7A examination administered by the New York Stock Exchange, Inc. ("NYSE") for members seeking to conduct a professional customer business from the Amex Floor. The Amex is also seeking approval to utilize the Series 7B examination for clerks of such members.

The text of the proposed rule change is available at the Amex and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 50(a) requires every applicant for regular or options principal membership to pass a

qualifying examination prior to undertaking active duties on the Floor, and the Amex administers six such examinations.¹ The contents of these examinations and related materials were approved by the Commission, pursuant to Rule 19b-4 under the Act.² In addition, some members choose to take the Series 7 examination (administered by the National Association of Securities Dealers, Inc.), an industry-wide qualification examination for persons seeking registration as general securities representatives.

A new more specialized examination, the Series 7A (administered by the NYSE), is designed only to qualify an exchange Floor member to accept orders from professional customers for execution on an exchange trading floor.³ The Exchange is now proposing to permit members who pass the Series 7A examination to accept orders from professional customers for execution on the Amex trading Floor.⁴ Those members who anticipate receiving orders in listed options from such customers will also be required to pass the Listed Put and Call Options Questionnaire for Registered Personnel, which is administered by the Amex. The use of this examination was previously approved by the Commission.⁵ Clerks of the Floor members would be required to pass the new Series 7B examination, which is administered by the NYSE.

It should be noted that the Commission has approved the content and use of both the Series 7A and 7B examinations.⁶

¹ The following examinations are administered by the Amex: the Qualification Examination for Regular Members, the Qualification Examination for Options Principal Members, the Put and Call Stock Option Exam, the Put and Call Option Questionnaire for Registered Personnel, the Specialist Exam and the Registered Equity Trader and Registered Equity Market Maker Exam.

² See Securities Exchange Act Release No. 35488 (Mar. 14, 1995) 60 FR 14986 (File No. SR-Amex-94-46).

³ Professional customers are defined as: a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit-sharing plan subject to ERISA or of any agency of the United States, or any state or a political subdivision thereof or any person (not including a natural person) who has, or has under management, net tangible assets of at least sixteen million dollars.

⁴ Exchange Rule 50(c) provides that: The Exchange may require that a member pass additional examinations before undertaking particular types of activities.

⁵ See Securities Exchange Act Release No. 35488 (Mar. 14, 1995) 60 FR 14986 (File No. SR-Amex-94-46).

⁶ See Securities Exchange Act Release Nos. 32698 (July 29, 1993), 58 FR 41539 (File No. SR-NYSE-93-10); 34334 (July 8, 1994) 59 FR 35964 (File No. SR-NYSE-94-13).